

1 change all of the customers of Business Options
2 to Buzz Telecom, and any of the previous names
3 will be put to bed.

4 (Inaudible discussion between witness
5 and Mr. Hawa.)

6 A. I have another company, Avatar
7 Enterprises, which employs Keanan, myself, and
8 our corporate affairs staff. And we use that as
9 our management company to manage Buzz Telecom.

10 Q. Does Business Options, Inc. then
11 continue to do business as Business Options,
12 Inc.?

13 A. Yes.

14 Q. Does it ever, though, do business as
15 Buzz Telecom?

16 A. Maybe the other way around. Our
17 employees are all paid by Buzz Telecom. When
18 they market, they market Business Options
19 service. When we call people up, they are
20 calling on behalf of Business Options.

21 Q. And they call on behalf of Business

1 Options because Business Options is the entity
2 that has an ongoing authority to do business in
3 whatever state in which they are marketing at
4 that point?

5 A. Yes.

6 Q. And Buzz Telecom may or may not have
7 that authority with respect to that state?

8 A. At this point, I think Buzz Telecom
9 has the authority in almost all the states, but
10 the billing and collection agreements and
11 arrangements are not fully in place.

12 Q. And by billing and collection
13 agreements, are you referring to agreements that
14 exist with an entity called USBI?

15 A. Yes. That agreement is in place.
16 Before we can bill through all the LEC's, we have
17 to have sales scripts and verification scripts
18 approved by the different LEC's, whether it's
19 Ameritech or Southwestern Bell -- well, I guess
20 they are the same now. Anyhow, they need to
21 approve our scripts. Just because we have an

1 agreement with USBI does not mean we can actually
2 bill through USBI until the LEC gives us the
3 thumbs up. So that's the process we are
4 undergoing -- getting our sales scripts and
5 verifications scripts approved.

6 Q. When did you first send your sales
7 script to any LEC?

8 A. Probably in 1995 or 1996 under
9 Business Options.

10 Q. And approximately how often are such
11 sales scripts sent from Business Options or any
12 of the other companies that are related here to a
13 LEC?

14 A. They don't request them on an ongoing
15 basis, to my knowledge.

16 Q. Do they request them on a annual
17 basis?

18 A. Not to my knowledge.

19 Q. Other than the scripts that you
20 mentioned having been sent in 1995 or 1996, what
21 scripts have been sent subsequent to that time to

1 a LEC?

2 A. Any of the scripts that we have
3 produced for Buzz Telecom would have at this
4 point been sent. Mr. Brzycki might be a better
5 person to answer that question, because it was
6 his role within our company to maintain the
7 relationship and to get us certified and be able
8 to bill in all the different states. And I don't
9 want to be vague; I just don't know the answer to
10 your question.

11 Q. It's perfectly acceptable if I ask you
12 a question and you don't know to say, "I don't
13 know."

14 A. Okay.

15 Q. I can always explore further --

16 A. Okay.

17 Q. -- and see who may know.

18 A. Okay. I am just trying to be candid.

19 Q. Simply because you are the top person
20 doesn't mean that you know absolutely every
21 little detail of what is going on.

1 A. Right.

2 Q. But you may know how does know.

3 A. Yes.

4 Q. So you can say that you don't know --

5 A. Okay. Thank you.

6 Q. -- and I will follow up from there.

7 A. Okay.

8 Q. Now, thank you for your overview. I

9 am going to still ask a couple of questions --

10 A. Okay.

11 Q. -- and see if I can pinpoint things

12 and see if I can make things as clear as I can

13 for everybody. I had asked you about U.S. Bell,

14 and you indicated that company had either just

15 dissolved or was in the process of dissolving?

16 A. Yes.

17 Q. With respect to Buzz Telecom, are you

18 currently an owner?

19 A. Yes.

20 Q. And what is the nature of your

21 ownership interest?

1 A. It's 72 percent of the shares
2 available.

3 Q. Basically an interest that is
4 identical to what you have with Business Options?

5 A. Yes.

6 Q. Who else owns interest in Buzz
7 Telecom?

8 A. Keanan Kintzel and Robert Dimmick.

9 Q. At 26 and 2 percent respectively?

10 A. Yes.

11 Q. Would it be fair to say that Buzz
12 Telecom and Business Options, Inc. have the same
13 businesses?

14 A. Yes.

15 Q. What differences, if any, would there
16 be to the businesses between Business Options,
17 Inc. and Buzz Telecom?

18 A. The primary difference is the name.
19 It's a marketing advantage to have a name that's
20 not directed toward businesses as we are
21 marketing to residential consumers. Other

1 differences would be the history that Buzz
2 Telecom was just formed last year, and Business
3 Options has been around for ten or eleven years.

4 Q. So I take it that you are -- Well, how
5 many directors does Buzz Telecom have, to your
6 knowledge?

7 A. Two.

8 Q. They would be who?

9 A. Kurtis Kintzel and Keanan Kintzel.

10 Q. And you two have been the only
11 directors of Buzz Telecom?

12 A. I don't know. Mr. Brzycki may have
13 been a director. I am sorry, I don't know the
14 answer to your question.

15 Q. Try to keep in mind if you can that I
16 am referring to a corporate director. I am not
17 asking about an officer.

18 A. That's what came to my mind after I
19 answered the question.

20 Q. So in terms of Mr. Brzycki, so far as
21 you know, he has never been a director of Buzz

1 Telecom?

2 A. I don't know.

3 Q. Other than yourself and Keanan and
4 possibly Mr. Brzycki, has anybody else ever been
5 a director of Buzz Telecom?

6 A. Not to my knowledge.

7 Q. Are you currently an officer of Buzz
8 Telecom?

9 A. Yes.

10 Q. Do you hold the office of president?

11 A. Yes.

12 Q. Have you always been president?

13 A. Yes.

14 Q. What other corporate officers are
15 there for Buzz Telecom?

16 A. There is a secretary/treasurer, which
17 is Keanan Kintzel. And I believe I am the
18 chairman of the board.

19 Q. You are?

20 A. Yes.

21 Q. How long has Keanan been

1 secretary/treasurer, roughly?

2 A. Between nine and twelve months.

3 Q. Has there been anybody else who was
4 ever an officer of Buzz Telecom?

5 A. I don't know.

6 Q. How often do the directors of Buzz
7 Telecom meet as directors?

8 A. Monthly.

9 Q. Are the meetings memorialized in any
10 way?

11 A. Occasionally.

12 Q. Could you give me the approximate time
13 of the last such meeting of Buzz Telecom
14 directors?

15 A. I believe a month ago.

16 Q. I am sorry?

17 A. I believe a month ago.

18 Q. And was that meeting memorialized in
19 any way?

20 A. I believe so.

21 Q. In writing?

1 A. I believe so.

2 Q. Did that involve yourself and Keanan?

3 A. Yes.

4 Q. Anybody else?

5 A. No.

6 Q. Now, with respect to the overseeing
7 the day-to-day business of Business Options, what
8 role, if any, would you say that you have?

9 A. I am the president of the company,
10 so --

11 MR. HAWA: Just by way of
12 clarification, I think what he is asking about
13 your responsibilities as president of the
14 company, but your specific day-to-day activities.
15 Is that correct?

16 MR. SHOOK: That's what I am looking
17 for, yes.

18 MR. HAWA: He is not looking from a
19 practical perspective, but from day-to-day.

20 WITNESS: Okay. I do weekly financial
21 planning; I do regulatory work; I sign documents.

1 BY MR. SHOOK:

2 Q. With respect to the weekly financial
3 planning, do specific individuals at Business
4 Options report to you and tell you, for example,
5 how much money is coming in and how much money is
6 going out?

7 A. Yes.

8 Q. Who are the individuals that do that?

9 A. Keanan Kintzel.

10 Q. Is he the only individual that does
11 that?

12 A. He has an assistant who helps him
13 gather information.

14 Q. Who is that?

15 A. Brian Bortko, B-O-R-T-K-O.

16 Q. Approximately how long has that
17 situation existed, where Keanan and/or Mr. Bortko
18 would provide you with weekly financial
19 information?

20 A. We have streamlined our process to
21 where he has come in weekly for the last year.

1 Q. Do you have any recollection as to how
2 the process worked prior to that time?

3 A. Yes.

4 Q. And what is it that you recall?

5 A. I would still get the information, but
6 it was not as organized as it is today. I would
7 still get the information every other week,
8 monthly.

9 Q. Who would provide the information?

10 A. I don't recall. Some of it, I would
11 gather myself.

12 Q. So currently, your brother Keanan and
13 Mr. Bortko are the two people who primarily
14 gather financial information and then supply it
15 to you on a weekly basis?

16 A. Yes.

17 Q. And that situation has been in place
18 for approximately a year?

19 A. Yes. Since December of 2002, so seven
20 months or eight months.

21 Q. And what events, if any, triggered

1 this change in the process that as of December of
2 2002, we now have Keanan and Mr. Bortko providing
3 you regular financial information? Was there an
4 event that triggered the change in the process?

5 A. The departure of Mr. Brzycki. At that
6 point, I took on a much more hands-on approach to
7 the regulatory affairs and financial management
8 of the company, and I sort of moved my office
9 down and really just put more focus on that area
10 of our business.

11 Q. Now, I framed the questions in terms
12 of Business Options, Inc. If I were to -- Well,
13 with respect to Buzz Telecom, is it the same
14 scenario that Keanan and Mr. Bortko provide
15 weekly financial information to you?

16 A. Yes.

17 Q. And that has been the case since
18 approximately December, 2002?

19 A. Yes.

20 Q. Now, you mentioned Mr. Brzycki's
21 departure was an event that had some relationship

1 to this change in the process. Would it be fair
2 for us to understand from your mentioning Mr.
3 Brzycki's departure that he had some role in
4 reviewing weekly financial information for
5 Business Options, Inc. prior to his departure?

6 A. No.

7 Q. Did he have any role whatsoever?

8 A. I am sorry -- let me go back and
9 re-answer that. He had a responsibility to
10 ensure all of our taxes were being paid, all of
11 our vendors were satisfied. He didn't actually
12 pay the bills, but the bills were reviewed, and
13 he had to know how much money was coming in. He
14 had a responsibility to make sure that we were in
15 compliance with whatever we were supposed to be.
16 So when he departed, that responsibility moved
17 onto my plate. And that's when I saw a need for
18 some improvement.

19 To elaborate on that a little bit --
20 up to that point, I was more in tune with our
21 sales marketing efforts on a day-to-day basis.

1 And Mr. Brzycki was handling more of the
2 corporate affairs type functions. My brother
3 was, for the most part, on sick leave for about a
4 year, roughly. I don't know the exact time
5 frame. But that's the way the responsibilities
6 were. Mr. Brzycki was doing corporate affairs; I
7 was running the internal operations of the
8 company. So upon his departure, I got into what
9 was actually going on in more depth.

10 Q. So in terms of Mr. Brzycki's
11 responsibilities, you had mentioned that it was
12 his job to ensure that regulatory payments with
13 the various states were made on a timely basis?

14 A. Yes.

15 Q. And it was his responsibility to
16 ensure that the tax returns were prepared and
17 filed on a timely basis?

18 A. Yes.

19 Q. If there were any regulatory fees to
20 be paid, it was his responsibility to ensure that
21 they were paid on a timely basis?

1 A. Yes.

2 Q. If there were any tariffs to be filed
3 with any state, it was his responsibility to
4 ensure that they were done on a timely basis?

5 A. Yes.

6 Q. Was there any process in place for
7 him -- him, being Mr. Brzycki -- to tell you
8 whether or not there was a problem with the
9 regulatory filings? In other words -- well, let
10 me try to clarify that. If a filing were late
11 and some kind of penalty ensued as a consequence,
12 would it be his responsibility to let you know
13 that that had happened?

14 A. It would have been his responsibility
15 to do that, yes.

16 Q. Was it your understanding that he in
17 fact did that?

18 A. He did not.

19 MR. HAWA: Can we clarify? If I
20 could, let me rephrase your question and see if
21 this is correct.

1 MR. SHOOK: Okay.

2 MR. HAWA: We are talking about files
3 where there were material violations. There are
4 50 states and thousands of filings.

5 MR. SHOOK: I understand there were
6 multiple filings. From looking through the
7 documents that you have supplied us, it was a
8 paperwork nightmare to keep up with the
9 applicable state requirements.

10 MR. HAWA: That's true.

11 BY MR. SHOOK:

12 Q. Let's say for this discussion, a
13 regulatory filing such as a tariff was not filed
14 in a timely manner in a particular state. Was it
15 Mr. Brzycki's responsibility to tell you that
16 such a filing had not been made on a timely
17 basis?

18 A. Yes, it was his responsibility.

19 Q. Did it come to your attention in late
20 2002 that one or more such regulatory filings had
21 not in fact been made on a timely basis?

1 A. Yes.

2 Q. Did that have any bearing whatsoever
3 on Mr. Brzycki's departure from the employ of
4 Business Options/Buzz Telecom?

5 A. Yes.

6 Q. Was it made clear to Mr. Brzycki that
7 such a failing or such failings were related to
8 his leaving your employ?

9 A. No.

10 Q. Now, I put it in very general terms.
11 Going back to December of 2002 or roughly that
12 time period, was there a failure on the part of
13 Mr. Brzycki in some way that was brought to your
14 attention that led to Mr. Brzycki's departure
15 from Business Options?

16 A. Yes.

17 Q. Could you tell us what that event was,
18 if there was a singular event? Or if there were
19 multiple events, could you tell us what those
20 are?

21 A. There were two events -- actually,

1 three events that were significant. What I
2 looked at was the whole, and I made my decision
3 that he needed to go elsewhere.

4 The first thing was that we had a tax
5 situation -- a federal tax situation in 1995 or
6 1996, somewhere around there. At that time
7 period, Mr. Brzycki was our treasury manager. He
8 had come out of college with an accounting
9 degree, and we hired him. So at that time, I
10 took that responsibility because ultimately it is
11 my responsibility.

12 Over the years, he had been promoted
13 up to vice president of administration. And part
14 of his duties were with the personnel areas of
15 our company. And then in 2002, we received some
16 Equal Opportunity complaints, and I found that
17 Mr. Brzycki had been negligent when staff members
18 had come to him and actually written reports.
19 When I say "negligent," I am going to
20 specifically refer to the fact that he did not
21 bring them to my attention. That was the second

1 thing -- at this time when we had the situation
2 with the EEOC.

3 And then the third area of his
4 responsibilities was regulatory. And it was
5 brought to my attention that there was a 499 --
6 is it 499-A? -- a form that he did not file. And
7 I believe it was during the summer of 2002, and
8 it was related to the payment of Universal
9 Service Fund fees. So for the last couple of
10 years, I have been writing out -- I have been
11 receiving bills and writing out checks that would
12 say, "Kansas USF" or "Missouri USF." And I am
13 signing multiple checks. I don't know how much I
14 have sent out, but they all say "USF" on the
15 bottom.

16 Q. Probably every state that has
17 something like that?

18 A. Yes. So basically, I felt we were in
19 compliance with all of our USF guidelines, and I
20 was very surprised to find out that we had not
21 paid them. So that was the straw that broke the

1 camel's back.

2 Q. Okay.

3 A. And at that point, the decision had
4 been made -- he had been a longstanding employee
5 of ours; he had been an employee for eight years,
6 but we had sensitive issues now with these
7 filings that we should have been making as well
8 as the EEOC matter. So we gave him a severance
9 package, and we parted ways.

10 Q. Now, as a consequence of learning that
11 a federal filing of some kind had not been
12 made --

13 A. Uh-huh.

14 Q. -- what is your understanding as to
15 what steps, if any, were taken to correct that
16 situation?

17 A. We started to research it immediately
18 to find out what we needed to do.

19 Q. We have seen documents that reflect
20 that in October of 2002 there was a 499-A filing
21 made on behalf of Buzz Telecom.

1 A. Uh-huh.

2 Q. Were you aware of that document?

3 A. I don't know that I have ever seen
4 that document, but I was quite certain that when
5 we found out about those filings, that we went
6 ahead and did it for Buzz Telecom. We were
7 uncertain as to what to do about Business Options
8 due to the amount of money that might be
9 involved. At that point, we needed to consult
10 counsel.

11 Q. To your knowledge, has any 499-A
12 filing ever been prepared for Business Options?

13 A. Not to my knowledge.

14 Q. To your knowledge --

15 A. Let me back up. To my knowledge, no
16 499-A form has ever been filed. I think we have
17 started the preparation to see what it would look
18 like and see what we owe.

19 Q. Well, I will phrase it in terms of
20 filings.

21 A. Okay.

1 Q. And then if you wish, you can
2 certainly clarify in your response.

3 A. Okay.

4 Q. With respect to U.S. Bell, has there
5 ever been a 499-A filing, to your knowledge?

6 A. Not to my knowledge.

7 MR. HAWA: Or to clarify, I believe
8 one of our responses to interrogatories indicates
9 that a 499 has never been filed. But I think as
10 you have pointed out, one was filed for Buzz
11 Telecom. So that would have been an inaccurate
12 response to the interrogatory.

13 BY MR. SHOOK:

14 Q. Mr. Hawa and Trent and I have had some
15 conversations along the way, and we understand
16 that there may be a little bit of play, if you
17 will, in the admissions or responses because the
18 responses were prepared on a very short notice.

19 A. Right.

20 Q. And we understand from Mr. Hawa that
21 you did the best you could in terms of trying to

1 prepare answers on a fairly quick turn-around
2 time.

3 A. Yes.

4 MR. HAWA: Could I ask for a
5 five-minute break?

6 MR. SHOOK: Let me finish getting this
7 on the table.

8 MR. HAWA: Sure.

9 BY MR. SHOOK:

10 Q. So if it turns out that you come
11 across some inaccuracies --

12 A. Sure.

13 Q. -- we understand you would come back
14 and let us know.

15 A. Yes.

16 Q. We accept your answers in that light.

17 A. Thank you.

18 MR. SHOOK: Okay. Let's take five
19 minutes.

20 (A short break was taken.)

21 BY MR. SHOOK: